IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REVISION No.643 of 2008
LANGAR MIAN & ORS
Versus
STATE OF BIHAR
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2. 08.07.2008. Heard learned counsel for the petitioners and State.

2. Petitioners are alleged to have forcibly harvested the crops from Plot No. 955 for which a complaint was filed alleging offences under Sections 323, 147 and 379 of the Penal Code. The trial court having considered the evidence acquitted the petitioners for the offences under Sections 323 and 147 of the Penal Code but convicted them for the offence under Section 379 of the Penal Code i.e. for the offence of forcibly harvesting the crops from Plot No. 955 and imposed a sentence of three years' simple imprisonment under judgment dated 30.9.2005 passed by Sri Dhananjay Kumar Mishra Judicial Magistrate, 1st Class, West Champaran, Bettiah in Complaint Case No. 489 of 1999/ Tr. No. 99 of 2005. Said judgment has also been affirmed in appeal by the appellate court (Additional District & Sessions Judge, Fast Track Court No.-III, West Champaran, Bettiah under judgment dated 27th March, 2008 passed in Cr. Appeal No. 45 of 2005.

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3. Learned counsel for the petitioner assails the conviction of the petitioners under Section 379 of the Penal Code on the ground that the lands over which forcible harvesting is alleged and found by the courts below are the subject matter of a proceeding under Section 145 Cr.P.C. and until such proceeding is disposed of by the Magistrate in favour of the complainant declaring his possession it is wholly erroneous for the courts below to hold that petitioners have forcibly

harvested the crops from the plot which is subject matter of the 145 Cr.P.C. proceeding.

4. I regret not to accept the aforesaid submission as from the judgments of the two courts below, it is evident that the petitioners have not even claimed possession over Plot No.955, the plot over which they have been found indulging in forcible harvesting. In the circumstances, the submission raised is absolutely without any basis, which is rejected. However, considering the fact that the petitioners have been convicted for the offence of forcible harvesting and instant is their first conviction the courts below ought to have considered their release under the provisions contained in Sections 360 and 361 of the Cr.P.C. as also under Section 4 of Probation of Offenders Act, 1958, I direct that the petitioners, namely, (1). Langar Mian, (2). Ali Ahmad Mian and (3). Khedan Mukhiya be released in connection with Complaint Case No. 489 of 1999/ Tr.No. 99 of 2005, if not wanted in any other case, on execution of bond of Rs. 5000/- (Five thousand) each in the court below (Shri Dhananjay Kumar Mishra, J.M., 1st Class, West Champaran, Bettiah) for maintaining good conduct for the period of their sentence. While parting with this case, I would like to observe that Section 145 Cr.P.C. proceeding, pending between the parties, be decided on its own merit, without being prejudiced by the findings recorded by the two courts below in the impugned judgment.

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5. This Cr. Revision application is, accordingly, disposed of.

6. Let this order be communicated to the court below through fax on payment of usual charges by the petitioners.

P.K.P. **(V.N.Sinha,J.)**

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